

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

IN RE:	§	
	§	
CINDY ALICIA ALLEN	§	Case No. 02-70227-HDH-13
	§	
Debtor.	§	

CINDY ALICIA ALLEN	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adversary No. 02-7022
	§	
TEX YEAGER	§	
	§	
Defendant.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Federal Rule of Bankruptcy Procedure 7052, the Court enters the following findings of fact and conclusions of law:

A. Findings of Fact

1. In 1999, Plaintiff Cindy Alicia Allen (“Allen”) and Defendant Tex Yeager (“Yeager”) entered into a business arrangement whereby Allen would provide certain farming equipment and cattle and Yeager would provide land in order to raise crops and cattle for resale. Certain expenses of the venture were split between the parties, and certain separate expenses, i.e. veterinarian bills, property taxes, were paid by the parties individually.
2. The business arrangement was successful for the year 2000 wheat crop and cattle. However,

in connection with the 2001 crop and cattle, a dispute arose between Allen and Yeager as to each party's respective share in the expenses and in the profits of that crop year. Specifically, all or a portion of the wheat crop planted for sale in 2001 failed. Allen originally claimed that she was owed one-half of insurance proceeds Yeager received for the failed crop. Allen, at trial, dropped that claim.

3. Allen sold calves in 2001 and these calves were a result of the business arrangement between the parties. Yeager, thus, alleges that he never received his share of the sale of calves from the cattle in 2001. Although the parties referred to various expenses they incurred in connection with the business arrangement, the record is unclear as to the amount of expenses either party actually seeks to recover. Yeager's testimony was vague, at best, regarding his intention to claim the amount of any expenses, in particular for the 2001 crop year that is in dispute.
4. On or about March 8, 2001, Allen removed her cattle from Yeager's property at Yeager's request. On or about March 9, 2001, Allen returned to retrieve her farming equipment; however, Yeager had changed the locks on the property. Yeager admits that he is holding Allen's equipment. Yeager alleges that he is holding the property as collateral against the profits Allen realized from the sale of the calves in 2001 but has failed to remit to Yeager.
5. Yeager has retained possession of the following equipment belonging to Allen:
 - A. one 1975 International Harvester tractor;
 - B. one sixteen-foot flatbed trailer;
 - C. one five-foot brush hog mower;
 - D. one four-gang tandem disc plow;

- E. one two-row mold board plow;
 - F. one two-spike hay fork;
 - G. one five-foot Shop Made utility trailer;
 - H. one hay ring (not specifically listed)
 - I. one eight-foot metal feeder;
 - J. one come-a-long and chain; and
 - K. one heavy-duty headgate,
6. Yeager alleges that Allen owes him repayment for certain loans made between 1999 and 2001 in the amount of \$2,000. Yeager further alleges that his portion of the partnership proceeds for the sale of the 2001 calves is approximately \$3,000. Yeager never filed any security interest in either the equipment or the cattle.

Conclusions of Law

1. Yeager never filed a counterclaim against Allen seeking repayment of the loans or his portion of the 2001 sale of the calves. Further, his answer does not affirmatively plead setoff. Yeager has not filed a claim in Allen's bankruptcy proceeding. Thus, any testimony relating to damages Yeager has sustained against Allen can only be used to support a lien against Allen's property.
2. Yeager admits that the equipment he currently holds is actually Allen's. Yeager argues that he is entitled to an agricultural lien against the equipment pursuant to TEX. PROP. CODE ANN. § 54.001 et seq. Section 54.002 of the Texas Property Code provides that

[a] person who leases land or tenements at will or for a term of years has a preference lien for rent that become due and for the money and the value of property that the landlord furnishes or causes to be furnished to the tenant to grow a crop on the leased premises and to gather, store, and prepare the crop

for marketing.

TEX. PROP. CODE ANN. § 54.001 (Vernon 2002). The preference lien attaches to, inter alia, the “crop grown on the lease premises in the year that the rent accrues or the property is furnished.” TEX. PROP. CODE ANN. § 54.002 (Vernon 2002).

3. Assuming, *arguendo*, that the calves were “crop” for purposes of §§ 54.001 and 54.002, the lien would only attach if Allen had leased the property. *See* TEX. PROP. CODE ANN. § 54.001 (Vernon 2002). Furthermore, where the landlord holds an interest in the crop, the landlord cannot simultaneously claim an agricultural lien. *Antone v. Miles*, 105 S.W. 39 (Tex. Civ. App. 1907). Yeager argued that he was entitled to one-half of the profit from the sale of the calves because one half of the calves were his. Yeager cannot have it both ways – he cannot have an ownership interest in the calves and an agricultural lien.
4. Nevertheless, even putting the foregoing aside, his agricultural lien, at best would only attach to the calves, not Allen’s equipment. The equipment clearly belonged to Allen. Yeager admits that he has withheld the equipment from Allen.
5. 11 U.S.C. § 362(h) provides that “[a]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” Section 362 provides, in relevant part an automatic stay against “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3).
6. Property of the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). At the time Allen’s bankruptcy was

instituted, Allen held a legal and equitable interest in the equipment.

7. As such, Yeager was required to turnover the property of the estate or the value of such property, and proceed with his rights in Allen's bankruptcy case, i.e. file a proof of claim. *See* 11 U.S.C. § 542(a).
8. Nevertheless, the automatic stay also applied to bar Yeager from exercising any other control over the equipment. Yeager violated the automatic stay by refusing to turnover the equipment once the Defendant was made aware of the bankruptcy. Yeager had numerous opportunities to turnover the equipment, but has failed to return the equipment to Allen.
9. Accordingly, the Court finds that Yeager violated the provisions of 11 U.S.C. §§ 362(h) and 542(a). Allen is entitled to the immediate turnover of the equipment. Further, the Court awards Allen \$1,000 against Yeager for damages for the willful violation of the automatic stay. Allen is also awarded \$500 as reasonable attorneys' fees in prosecuting this matter.

SIGNED: 2-14-03



The Honorable Harlin D. Hale
United States Bankruptcy Judge

